



OFFICE OF  
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March 15, 2017

Sgt. Leigh Maroni (6711)  
Lt. Kevin DeSpain (2729)  
LMPD, Public Integrity Unit  
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Louisville, KY 40215

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RE: PIU Case #16-054, Officer Beau Gadegaard (7201)  
Officer Taylor Banks (7293)

Dear Sgt. Maroni:

Thank you for meeting with Erwin Roberts and me on November 18, 2016. Mr. Roberts and I, along with three other prosecutors in the Office of the Commonwealth's Attorney, have reviewed the Public Integrity Unit (PIU) file #16-054 and the investigation of the shooting death of Mr. Darnell T. Wicker. We also thank you for going to the scene with us on January 24, 2017, and to the Property room on February 28, 2017. Thank you also for the follow-up with additional information from the Louisville VA Medical Center.

**MATERIAL REVIEWED**

We reviewed the PIU file which included both audio recorded and transcribed statements of the three officers and the two civilians who witnessed the shooting, Emergency Medical Technicians (EMTs), supporting members of the Louisville Metro Police Department (LMPD), the Medical Examiner's report, evidence collected by and scene video filmed by the LMPD Crime Scene Unit (CSU) technicians, reports from the Kentucky State Police (KSP) Forensic Crime Lab, in-car videos and body cam recordings made by Officer Taylor Banks (Banks)(7293), Officer Beau Gadegaard (Gadegaard) (7201) and Officer Brian Smith (Smith) (7762), as well as body cam recordings of other officers who arrived at the scene after the shooting occurred.

Additional information from counsel representing the estate of Mr. Wicker was reviewed, including but not limited to records from the VA Medical Center (pertaining to Mr. Wicker's hearing), Vision Works, a Use of Force form dated October 15, 2015, and related body cam recordings pertaining to Gadegaard (7201).

We submitted a copy of the postmortem toxicology report to Dr. Greg Davis for his assessment of potential intoxication based on the level of cocaine found in Mr. Wicker's blood, as well as benzoylecgonine found in Mr. Wicker's blood and urine.

Finally, we reviewed the LMPD's Standard Operating Procedures (SOP) § 9.1.13 and Kentucky Revised Statute (KRS) 503.050 et seq, as said sections pertain to self-protection and deadly physical force.

### SUMMARY OF FACTS

To fully appreciate the events surrounding the police shooting which occurred in the early morning hours of August 8, 2016, it is necessary to review events that occurred beginning on the evening of August 7, 2016.

Ms. Denita Jones and Ms. Anita Jones each gave statements on August 8, 2016, describing those events. Various family members and friends were at Denita's home, 3120 South Crums Lane for a barbeque. Denita's mother, Anita, was also present. At approximately 10:30 p.m., Mr. Wicker came to the barbeque. He and Anita had dated, or he lived with her, over the last twenty-two years. He wanted a key to Anita's apartment. She refused to give him her key. Anita explained in her statement that even though he lived with her, Mr. Wicker would frequently lose the key and she would be required to pay replacement costs. Mr. Wicker left the party on his bicycle, his usual mode of transportation.

Anita and Denita left Denita's home sometime after 1:00 a.m. on August 8<sup>th</sup>. When they arrived at Anita's home at 4509 Broadleaf Drive, Apartment 4, they saw Mr. Wicker's bike. Denita stayed at the car and Anita walked up to the door. The left door jamb was splintered, indicative that the door had been kicked in. Anita immediately began telling Mr. Wicker he needed to leave as she asked her daughter to call the police. Initially he responded he wasn't going anywhere. Later, Mr. Wicker brought out a white 5 gallon bucket and some other items. Anita came out to smoke a cigarette as she stood next to Denita's car.

Anita asked her daughter to call the police. Denita could tell from his actions that Mr. Wicker was angry. At 1:35:15 (a.m.), Denita called 911 to advise there was an argument between her mother and her boyfriend, Darnell Wicker. She also advised he had kicked in the door and that he had a knife. Denita reported that Mr. Wicker had gone back inside the apartment.

The 911 call was dispatched as a domestic trouble run. Officer Smith was in the parking lot of McDonald's, 4443 Cane Run Road. He delayed responding to give his backup, Officer Gadegaard, the opportunity to respond. Banks drove the second vehicle with Gadegaard as a passenger. They arrived shortly after Smith.

While waiting for police, Denita observed Mr. Wicker come back out of the apartment, sit in a chair and play with two knives. When he approached them, Anita jumped into the car. The women rolled up the windows and locked the doors. Mr. Wicker asked why they were "doing this to him" and that he was "not a bad guy." Anita again demanded he leave, telling him to "go back where you was (sic) at earlier today" and to "go around and stay where you was (sic) at." She repeatedly told him to leave before the police arrived.

Both women stated that he went back in to the apartment and came out with one or two knives and a saw. Denita also said in her statement that before police arrived, Mr. Wicker "kneeled (sic) down in the chair and prayed or act like he was praying." He then returned to the apartment before the first officer, Smith, arrived.

Upon arrival at the Broadleaf Arms apartment complex, Smith saw Anita and Denita. Smith spoke with them for approximately one minute. Anita identified Mr. Wicker as her boyfriend, but said he did not live there. Smith directed the woman to stay back. As Smith walked toward the apartment, Officers Gadegaard and Banks arrived in the parking lot. They got out of the cruiser and hurried to join Smith. Both Gadegaard and Banks observed Smith with his service weapon as he approached Mr. Wicker. Instinctively, Banks and Gadegaard unholstered their guns as well. Facing Mr. Wicker, Gadegaard was in the center with Smith on the right and Banks on the left; so Smith was closest to the weapon.

As the officers approached Apartment #4, Mr. Wicker opened the door. Smith observed a saw in Mr. Wicker's right hand and an object in the left. There was eye contact with Smith and Gadegaard, and Mr. Wicker briefly stepped back into the apartment. The officers described the apartment lights as being turned on. When he stepped back out of the apartment, Gadegaard and Smith described Mr. Wicker as having a "mean face."

Denita said in her statement that Smith had his gun out but held it down at his side as he approached the apartment door. Mr. Wicker stepped out of the apartment. Smith yelled at Mr. Wicker to drop the knives. "Put it down." She said Mr. Wicker had his hands in the air holding and waving the objects. She was sure he had a saw in his hand. She stated when the officer(s) said "put it down", that Wicker raised his hands and the saw. She said Mr. Wicker failed to drop the saw.

Although Gadegaard yelled at least three times "drop the knife" or "drop it", Mr. Wicker continued to advance. Gadegaard said Mr. Wicker raised his right arm with the saw visible. Gadegaard stated Mr. Wicker's right leg was back which helped conceal the saw blade until he swung it. The officers stated Mr. Wicker moved toward them in an aggressive manner while swinging the saw.

In rapid succession two of the officers, Banks and Gadegaard, fired at Mr. Wicker. Smith never fired his weapon. Banks believed Gadegaard fired first, then he fired. Both Banks and Gadegaard ceased shooting when Mr. Wicker stopped advancing. At the time he fired, Gadegaard believed they were five to seven feet apart and that he fired five to eight times. Banks believed he fired four to seven shots. Banks recalled Mr. Wicker took two to three steps toward the officers.

Anita only remembered the officers yelling one time to drop the knife. All three officers stated they yelled multiple times to "drop the knife" or "drop it". All three recalled the saw was in Wicker's right hand.

While Anita and Denita tried to describe the events, the body cam recordings of Banks and Smith are the best representation of what happened.

Gadegaard immediately called for Emergency Medical Services (EMS) and additional police support. Although one officer briefly checked Mr. Wicker to see if he was alive, no first aid or cardiopulmonary resuscitation (CPR) was administered. Both Gadegaard and Banks went into the apartment after the shooting to look for additional persons. No one was found inside.

Major William Loudon (Loudon) was the first EMT to arrive at the scene (his medical treatment will be described later in this letter). He spoke with a woman he believed to be the girlfriend of the patient (Mr. Wicker). In his interview on September 26, 2016, he recounted that she said she and her daughter had returned from an event (he wasn't sure what it was), that Mr. Wicker did not live at the apartment, that Mr. Wicker had kicked in her door, and that they locked themselves in her daughter's car. According to her, Mr. Wicker came back to the car and threatened her. When she said she already called the cops, Mr. Wicker responded he "didn't give a f---".

EMT Loudon also recalled a younger female who kept trying to diffuse the situation, telling people "they told him to drop the knife but he wouldn't do it."

LMPD Officer Lonzo McConico was the first officer to arrive after the shooting. He helped with crowd control and spoke with Denita Jones. She told him that after officers told Mr. Wicker to put it down, he raised it above his head. She also said they (the officers) did "what they had to do." Many of these statements were made in the



back of Officer Helen Louise Walton Johnson's (Johnson) (7154) police cruiser. Johnson reported that Denita said Mr. Wicker was "cracked out." Additionally, Denita told Johnson that she believed Mr. Wicker was high on drugs and wanted the police to kill him.

CSU collected multiple shell casings, as well as some projectiles at the scene. They also photographed the area and made a video. A total of thirteen spent casings were collected. The Glock pistols used by Gadegaard and Banks, as well as two partially used magazines and two fully loaded magazines were recovered. Each Glock had a live round in the chamber.

On October 11, 2016 it was determined by the KSP crime lab that Gadegaard fired his weapon five times and Banks fired his weapon eight times. The projectiles, some from the scene and some from Mr. Wicker's body were also examined. It could not be determined which had been fired from which officer's gun.

The autopsy completed on November 9, 2016 revealed fourteen gunshot wounds. The sequence in which those wounds occurred could not be determined. Each projectile path was front to back and most show a slightly downward path. It appears six projectiles touched right to left, and five, left to right. The remaining projectiles traveled front to back with no significant left/right deviation. One wound (H) to the right hand was superficial and may have been part of a trajectory of a projectile into the deceased's body.

The toxicology report showed Mr. Wicker's blood was positive for cocaine (60.00 ng/mL) and benzoylecgonine (1810 ng/mL). The level of benzoylecgonine in his urine was 112,565. Those results were submitted by our office to Dr. Gregory J. Davis, MD, FCAP, a professor at the University of Kentucky and former associate Chief Medical Examiner for the Commonwealth of Kentucky. In his report, completed on February 2, 2017, and enclosed with this letter, he noted in a study where persons arrested for impaired driving and only cocaine or benzoylecgonine were detected, the average blood cocaine concentration was 95 ng/mL. The average concentration of benzoylecgonine was 1,010 ng/mL. Dr. Davis noted that blood cocaine concentration "correlate poorly with its toxic effects, as the same blood concentration may be a cause of death in one case and an incidental finding in another." Dr. Davis made it clear that no minimum fatal concentration for cocaine has been established.

Dr. Davis expanded on the excessive use of cocaine:

Cocaine is well-known among forensic pathologists and death investigators for having the capacity to lead to episodes of bizarre behavior with hyperactivity and hyperthermia, known as "cocaine

psychosis" or "excited delirium," likely related to cocaine-induced dysregulation of dopamine homeostasis (health) in the brain.

Clinical studies suggest that a high percentage of regular cocaine abusers exhibit symptoms of paranoia and hallucinations. Such observations have been known for well over a century, as neurologists recognized that abusers were subject to paranoid psychosis. The development of such paranoia among cocaine abusers is unpredictable and not dose-related.

Finally, Dr. Davis provided that in his expert opinion;

The investigative findings of Mr. Wicker's alleged behavior and the laboratory findings of cocaine and benzoylecgonine in Mr. Wicker's blood at autopsy are consistent with his being intoxicated by cocaine at the time of his altercation and death on the morning of August 8, 2016. The ultimate question of whether such intoxication caused or contributed to his alleged behavior would be up to the trier of fact, correlating, among other data, his behavior and the presence of cocaine and benzoylecgonine in his blood.

Finally, when Loudon, the first EMT to arrive, treated Mr. Wicker, he found him to be non-responsive, not breathing and to have no pulse. EMT Loudon opined that CPR would not have helped due to the extensive lung damage. During his interview on September 27, 2016, Loudon noted there were several "fatal wounds", centrally located and exit wounds where lung tissue could be seen. Loudon said even if Mr. Wicker had been shot while in the emergency room, his chance of survival was less than one percent.

## ANALYSIS

LMPD's SOP 9.1.13 describes when deadly force may be used by a member of the police department:

### **9.1.13 USE OF DEADLY FORCE**

Justification for the use of deadly force must be limited to what reasonably appears to be the facts known, or perceived, by an officer under the circumstances. Facts not known to an officer, no matter how compelling, cannot be considered in later determining whether the use of deadly force was justified. Deadly force, as with all uses of force, may not be resorted to unless other reasonable alternatives have been exhausted, would clearly be ineffective or exigent circumstances exist. Deadly force is

authorized in defense of oneself or another when the officer reasonably believes, based on the facts and circumstances, that the person against whom the force is used poses an immediate threat of death or serious injury to the officer or to another person. . . .

The officer must be able to justifiably articulate his/her actions. . . .

If feasible, verbal warnings should be given before the use of deadly force. Warning shots are not permitted. Deadly force is never authorized to apprehend a fleeing misdemeanor or nonviolent felony suspect (NOBLE). . . .

Officers are authorized to discharge a firearm for the following purposes:

- In defense of human life, including the officer's life, or in defense of any person in immediate danger of serious physical injury or as described in this section.

KRS 503.050<sup>1</sup> and KRS 503.070<sup>2</sup> provide guidelines for use of deadly physical force when protecting oneself or another. Except when force is used against a peace

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<sup>1</sup> (1) The use of physical force by a defendant upon another person is justifiable when the defendant believes that such force is necessary to protect himself against the use or imminent use of unlawful physical force by the other person. (2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when the defendant believes that such force is necessary to protect himself against death, serious physical injury, kidnapping, sexual intercourse compelled by force or threat, felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055.

<sup>2</sup> (1) The use of physical force by a defendant upon another person is justifiable when: (a) The defendant believes that such force is necessary to protect a third person against the use or imminent use of unlawful physical force by the other person; and (b) Under the circumstances as the defendant believes them to be, the person whom he seeks to protect would himself have been justified under KRS 503.050 and 503.060 in using such protection. (2) The use of deadly physical force by a defendant upon another person is justifiable when: (a) The defendant believes that such force is necessary to protect a third person against imminent death, serious physical injury, kidnapping, sexual intercourse compelled by force or threat, or other felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055; and (b) Under the circumstances as they actually exist, the person whom he seeks to protect would himself have been justified under KRS 503.050 and 503.060 in using such protection. (3) A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

officer, KRS 503.085<sup>3</sup> details the immunity protection enjoyed by one who claims to act in self-defense.

Basically, a civilian is entitled to use deadly physical force<sup>4</sup> when he believes the use of such force is necessary to protect himself or another against death, serious physical injury<sup>5</sup>, or . . . other felony involving use of force . . . .

KRS 503.090<sup>6</sup> provides similar protection for law enforcement agents trying to make an arrest.

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<sup>3</sup> (1) A person who uses force as permitted in KRS 503.050, 503.055, 503.070, and 503.080 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom the force was used is a peace officer, as defined in KRS 446.010, who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law, or the person using force knew or reasonably should have known that the person was a peace officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant. (2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1) of this section, but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.

(3) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff, if the court finds that the defendant is immune from prosecution as provided in subsection (1) of this section.

<sup>4</sup> "Deadly physical force" means force which is used with the purpose of causing death or serious physical injury or which the defendant knows to create a substantial risk of causing death or serious physical injury. KRS 503.010(1).

<sup>5</sup> "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ. KRS 500.080(15).

<sup>6</sup> (1) The use of physical force by a defendant upon another person is justifiable when the defendant, acting under official authority, is making or assisting in making an arrest, and he: (a) Believes that such force is necessary to effect the arrest; (b) Makes known the purpose of the arrest or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested; and (c) Believes the arrest to be lawful. (2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when: (a) The defendant, in effecting the arrest, is authorized to act as a peace officer; and (b) The arrest is for a felony involving the use or threatened use of physical force likely to cause death or serious physical injury; and (c) The defendant believes that the person to be arrested is likely to endanger human life unless apprehended without delay. (3) The use of physical force, including deadly physical force, by a defendant upon another person is justifiable when the defendant is preventing the escape of an arrested person and when the force could justifiably have been used to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including



Mr. Wicker also suffered from tinnitus, which according to the Veterans Affairs (VA) medical record could cause anxiety or a small panic attack. In January 2013, Mr. Wicker was approved for hearing aids. A pair were made for Mr. Wicker but it doesn't appear he ever picked them up. It would appear Mr. Wicker had no significant hearing impairment which prohibited him from communicating with Anita Jones through a closed car window.

Counsel for Mr. Wicker's estate filed in court records and made statements to the media, that a blurred still photo showed the saw blade was at Mr. Wicker's lower left side. The testimony of the three officers was that the blade was in his right hand, raised above his head. Denita Jones stated the saw was above his head. Further, the still photographs prior to the one referenced by counsel show the "object" in Mr. Wicker's hand is light from the apartment through the partially opened door, shining through the handle side of the door. The light is partially obscured by a charcoal grill on the patio creating a curved effect.

Depending on the angle of the body cam and Mr. Wicker's movements as he moves forward, the "object" moves in and out of Mr. Wicker's hand.

Finally, counsel for the estate asked that we review a Use of Force form and body cam video of an incident which occurred on October 15, 2015, almost nine months earlier. Without going through every detail, it was determined that Gadegaard used appropriate **physical** force to counter **physical** force, that he had a plan to deal with different contingencies and that he suffered more severe injuries than the suspect who was being arrested on outstanding warrants. A subsequent complaint by the suspect was repudiated by the body cam. Witnesses at the scene stated the suspect suffered from a mental illness and was purposefully antagonist toward officers.

## CONCLUSION

From all the testimony of the three officers, Gadegaard, Banks, and Smith, as well as Anita Jones and her daughter Denita Jones, it is clear that Mr. Wicker ignored a directive to drop his weapon. The command was given multiple times by several uniformed officers and is supported by recordings on Banks' and Smith's body cams. (Notwithstanding the Jones' assertion that only one warning was given).

Further, it is apparent Mr. Wicker was moving toward the officers and that this movement, coupled with him possessing a twenty-inch fixed tree saw blade, a deadly weapon, created a risk of not only serious physical injury, but injury that could be caused within seconds. The parties were less than ten feet apart at the time the

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deadly force, which he believes to be necessary to prevent the escape of a person from jail, prison, or other institution for the detention of persons charged with or convicted of a crime.

officers fired. Officers responding to a domestic violence complaint, one of the more dangerous runs they make, cannot be expected to know what physical impairments a suspect may suffer. Regardless, Mr. Wicker did not suffer from such sight or hearing deficits that he could not see there were officers in uniform or police cars in the apartment parking lot or to hear their commands to "drop it".

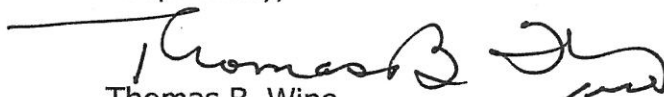
It is not clear why, but Wicker appeared to be preparing for a confrontation. According to both Anita and Denita, he went back into the apartment to arm himself with a kitchen knife or knives. Although he could have placed the saw into his tool bucket, he carried it in and out of the apartment. Denita saw him praying before the officers arrived. Anita told him multiple times to leave before the police arrived. His response was he "didn't give a f---". While we are not required to establish Mr. Wicker's state of mind, the high levels of cocaine and benzoylecgonine obviously affected his behavior and judgment. Denita's assessment that he was "cracked out" that day is supported by the toxicology report. While they later expressed the opinion the police did not give Mr. Wicker enough time, on the morning of the shooting, both Anita and Denita said he was swinging the knife back and forth. Denita also opined "they (the police) did what they had to do."

The officers complied with LMPD SOP 9.1.13 dealing with the use of deadly physical force. Under KRS 503.090, both Officers Gadegaard and Banks used appropriate deadly physical force.

At the time that Officer Taylor Banks and Officer Beau Gadegaard discharged their weapons, they perceived a real and substantial threat to their lives and the lives of others and they discharged their weapons in an effort to stop that threat. All the evidence contained in the PIU investigation indicates that Officer Banks' and Officer Gadegaard's actions were consistent with their duties as law enforcement officers and consistent with the laws of self-protection and protection of others in the Commonwealth of Kentucky.

Based upon the aforementioned facts, it is the conclusion of this office that the actions of the officers were consistent with the laws of the Commonwealth, and the matter will not be further reviewed by this office.

Respectfully,

A handwritten signature in black ink, appearing to read "Thomas B. Wine", with a stylized flourish at the end.

Thomas B. Wine  
Commonwealth's Attorney